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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,295	10/31/2003	Christian Saint Andre	ANDRE01UTL	5434
27189 7590 05/20/2009 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101				
EXAMINER NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
NOTIFICATION DATE		DELIVERY MODE		
05/20/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com
PTONotifications@procopio.com

Office Action Summary

Application No.

10/698,295

Applicant(s)

ANDRE, CHRISTIAN SAINT

Examiner

TAM NGUYEN

Art Unit

3764

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 7-9, 11, 13 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/10/08 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “first lateral arm (150) and a generally rectangular brace (160) movably connected to each other” disclosed in claim 14 must be shown or the feature(s) canceled from the claim(s). In particular, the drawings appear to show that the first lateral arm is fixed to the brace. Additionally, if the lateral arm is adjustable to the brace via, for example, a telescoping embodiment, then it would appear that part of the lateral arm would have to be disposed between the opposite walls of the brace during various length adjustments between the brace and the lateral arm which would interfere with the user's ability to secure one of the office chair's arms to the brace. Note, claims 4 and 9 also disclose the same adjustability. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (6,244,989).

2. As to claims 1-4 and 12, Chen discloses a leg exercise device capable of being used with an office chair, the device comprising a leg exercise mechanism (25,26,30,31,32) capable of use by a user while seated on an office chair and a rigid connection mechanism (10) extending from the leg exercise mechanism for detachably and rigidly connecting the leg exercise mechanism to a seat support of an office chair wherein the connection mechanism includes a pen-annular collar with a securing mechanism (11) securable to the seat support of the office chair and a brace (201) securable to a lateral extending arm of an office chair, the leg exercise mechanism includes a pedaling mechanism and a difficulty control mechanism (26), and the pedaling mechanism is slidably connected to the rigid connection mechanism (see Figs.

2 & 3). Note, the brace is secured to an office chair's laterally extending arm via the brace's connection to the rigid connection mechanism and the office chair's seat support.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dranselka (4,262,902) in view of Chen (6,244,989).

3. As to claim 1, Dranselka discloses a leg exercise device capable of being used with an office chair, the device comprising a leg exercise mechanism capable of use by a user while seated on an office chair and a rigid connection mechanism extending from the leg exercise mechanism for detachably and rigidly connecting the leg exercise mechanism to a seat support of an office chair wherein the connection mechanism includes a brace (14) securable to a lateral extending arm of an office chair (see Fig. 1). Dranselka does not disclose that the rigid connection mechanism comprises a collar securable to a single seat support of an office chair. Chen discloses an exercise device having a rigid connection mechanism that comprises a collar (11) securable to a single seat support of an office chair (see Fig. 2). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute Dranselka's transverse rear member (12) with Chen's collar such that the device can also be attached to chairs

having a single central support. Note, the brace is secured to an office chair's laterally extending arm via the brace's connection to the rigid connection mechanism and the office chair's single central support.

4. As to claim 6, Dranselka and Chen disclose a modified leg exercise device as describe above. Dranselka does not disclose that the exercise device includes a slip-resistant tread. The Examiner takes Official Notice that the prior art includes exercise devices having slip-resistant treads. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine a tread to Dranselka's base plate 16 to improve the since stability of the exercise device.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen '989 in view of Nusbaum (6,712,737).

5. Chen discloses a leg exercise device as described above. Chen does not disclose that the rigid connection mechanism (10) includes a first lateral arm and a generally rectangular brace movably connected to each other for adjusting the lateral distance of the leg exercise mechanism from an office chair wherein the rigid connection mechanism also includes a lock. Nusbaum teaches an adjustment means having an arm (74), a generally rectangular brace (68) movably connected to each other and a lock (78) (see Fig. 1 & 3a). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Chen's rectangular portion (10) of the rigid connection mechanism with Nusbaum's arm, rectangular brace and lock such that a user can adjust the distance between an office chair and the pedaling mechanism for improved comfort of user. Adjustability, where desirable, is a

modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

7. Claims 7-11, 13 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 12, 2009

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764